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February 14, 2023

VIA ECF

Honorable Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *In re Bed Bath and Beyond Inc. Section 16(b) Litigation*
No. 22 Civ. 09327 (PGG)

Dear Judge Gardephe:

We represent plaintiff Judith Cohen in the consolidated actions. I am afraid I ignited this controversy last week when I inquired of Augenbaum's counsel if he would consider joining in filing a Consolidated Amended Complaint to make the threshold motion stage of this case more efficient.¹

On Friday, February 11, 2023 (albeit at 5:03 p.m.) I alerted Defendants to my intention and the fact that Augenbaum had declined to join me. Defendants' response was that Rule 15(a)(1)(A) barred the filing of an amendment. I replied that notwithstanding 15(a)(1)(A), Rule 15(a)(1)(B) did indeed permit amendment without leave under the circumstances here. Later Monday, I filed the Cohen Amended Complaint.

Now, Defendants' seek an extension of the briefing, to which we do not object. However, if in response to Defendants' motion to dismiss, Augenbaum files an amendment within 21 days thereof and if Defendants then seeks to file another "omnibus" motion to dismiss, then we would reserve our right to ask that the Cohen motion to dismiss go forward without further delay. In all circumstances, we will endeavor to act cooperatively to advance the case past the pleading stage as quickly as possible without regard to any "Augenbaum v. Cohen" maneuvering.

¹ I believe all of Defendants' concerns over the validity of the claims can be addressed and perhaps a motion to the face of the pleading avoided. To that end, after Augenbaum's counsel's refusal to join in an amendment, I finalized an amendment of the Cohen complaint, fortified in part by certain factual allegations in the Second Amended Class Action Complaint in *In Re Bed Bath & Beyond Corporation Securities Litigation*, (U.S.D.C. D.C. 22-cv-2541), ECF No. 66, filed 01/30/23).

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In conclusion, Cohen consents to Defendants' proposed schedule.

Respectfully,

A handwritten signature in black ink, appearing to read "Lee Squitieri", with a long horizontal flourish extending to the right.

Lee Squitieri

LS:mm

cc: All counsel of record via ECF